IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Revision No. 6468 of 2011(O&M)
Date of decision. 29.11.2011

Shiromani Gurudwara Parbandhak Committee .... Petitioner

Versus

Manjit Kaur ..... Respondent

CORAM: HON'BLE MR. JUSTICE VIJENDER SINGH MALIK

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. P.S. Thiara, Advocate
for the petitioner.

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Vijender Singh Malik, J.

CMs No.28338 & 28339 of 2011

The petitioner is permitted to file copies of Annexures P-3 and P-4 and is exempted from certified copies thereof.

The miscellaneous applications are accordingly allowed.

CR No.6468 of 2011

This is a petition brought by the plaintiff under the provisions of Article 227 of the Constitution of India for setting aside the order dated 25.08.2011 passed by learned Additional Civil Judge (Sr. Divn.), Kurukshetra vide which the application of the petitioner seeking amendment of the plaint has been dismissed.

The plaintiff-petitioner has filed a suit for recovery of Rs.25,875/- as arrears of rent and Rs.6525/- as interest thereon claiming the defendant to be a tenant in possession of shop no.2 under the petitioner and that he has been in arrears of rent w.e.f. 01.01.2003 to 30.09.2006 at the rate of Rs.575/- per month plus house tax. The petitioner had also mentioned about filing of an application for eviction of the respondent from the shop in question for being in arrears of rent w.e.f. 1.1.2003 to 31.05.2004. According to the petitioner, the defendant did not tender the rent of the shop in question before the Rent Controller and the said eviction petition is pending before learned Rent Controller, Kurukshetra.

The defendant had denied the relationship of landlord and tenant between him and the plaintiff and had denied his liability to pay any rent to it.

When the suit was at the stage of rebuttal evidence and arguments, the plaintiff filed an application for amendment of the plaint claiming to add the relief of declaration that the judgment dated 12.2.2009 passed by Rent Controller, Kurukshetra and the order dated 12.10.2010 passed by the Appellate Authority upholding the said order are illegal, null and void, inoperative, ineffective and without jurisdiction and not binding on the rights of ownership of the plaintiff. The plaintiff also wants to add to the pleadings the facts that the Rent Controller, Kurukshetra dismissed the eviction application for the reason that the plaintiff has failed to prove the relationship of landlord and tenant

between the parties and the Appellate Authority has also dismissed the appeal upholding the order dated 12.02.2009 of the Rent Controller, Kurukshetra. The plaintiff also wants to substitute the word 'mesne profits' wherever the words “arrears of rent” or “rent” appears in the plaint. The plaintiff also wants to substitute the word '”occupier” for the word “tenant” wherever it occurs in the plaint. He also wants to add that the proceedings under the Rent Act are summary in nature and the orders passed by the Authorities under the Rent Act are illegal. He wants to add in the plaint that the plaintiff is owner of the property and the defendant is just occupier and so the plaintiff is entitled to get mesne profits. The plaintiff has lastly sought to add the averment that the defendant is not owner of the shop in question as she has no sale deed in her favour regarding the same.

I have heard Shri P.S. Thiara, learned counsel for the petitioner and have gone through the record.

Learned counsel for the petitioner has submitted that the petitioner does not want to change the nature of the claim by way of the amendment. According to him, the plaintiff only wants to bring on record the later developments and as the plaintiff is not to lead any evidence after this amendment, the defendant would not be prejudiced by the amendment.

The plaintiff wants to completely change the nature of the suit. What the plaintiff has originally claimed is that the defendant is a tenant over shop no.2 under it on payment of Rs.575/- as rent and that the defendant is in arrears of rent with effect from 01.01.2003 to 31.05.2004

so the plaintiff sought recovery of Rs.25,875/- as rent and Rs.6525/- as interest thereon. Now besides challenging the order of Rent Controller dated 12.02.2009 and the decision of learned Appellate Authority dated 12.10.2010, the plaintiff has sought to make out a claim for mesne profits claiming itself to be owner and the defendant to be occupier of the shop in question. So, the amendment would change the nature of the claim, which could not be allowed.

Moreover the plaintiff cannot challenge the decisions of Rent Controller and learned Appellate Authority by way of this suit. If the plaintiff is allowed to challenge the decisions of the Rent Controller and Appellate Authority, the plaintiff would be challenging the findings that there was no relationship of landlord and tenant between the parties. Anyone challenging these findings would be taken as asserting the relationship of landlord and tenant between the parties. However, on the other hand, the plaintiff wants to change the nature of its claim and has sought to claim mesne profits by seeking permission to claim itself as owner and respondent as occupier. So the two aspects in the amended plaint, if the amendment is allowed, would be at conflict with each other, which cannot be permitted.

In these circumstances, learned trial court has justified in declining the prayer of the plaintiff for amendment of the plaint. Consequently, I find no merit in the revision petition and dismiss the same.

29.11.2011 (VIJENDER SINGH MALIK)
dinesh JUDGE